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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,658	01/19/2004	Knud Klingler	41587.012502(346)	9864
29493	7590	11/30/2006	EXAMINER	
HUSCH & EPPENBERGER, LLC 190 CARONDELET PLAZA SUITE 600 ST. LOUIS, MO 63105-3441			EDELL, JOSEPH F	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/760,658

Applicant(s)

KLINGLER, KNUD

Examiner

Joseph F. Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. As the 37 C.F.R. 1.55(c) petition filed 29 August 2006 was dismissed, the amendment to the first sentence of the specification was not entered and application's priority remains non-compliant.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 32, 33, 37, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,609,394 to Ligon, Sr. et al.

Ligon, Sr. et al. disclose a lumbar support mechanism that includes all the limitations recited in claims 32, 33, 37, and 42. Ligon, Sr. et al. show a lumbar support mechanism having a lumbar support element 18 (see Fig. 1) being flexible through a range of flexion, an adjustment device 40 engaging upper and lower portions of the lumbar support element, and two flap portions 27 that are oppositely-oriented, attached to the lumbar support element by two connecting webs (see Diagram A below) forming

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a horizontal pivoting axis about which the flap portions pivot upon adjusting of the adjustment device wherein the lumbar support element has variable resilience and the flap portions are integral with the lumbar support element. With respect to claim 34, stiffening of a lumbar support element's variable resilience upon increased flexion is an inherent property of any element subject to increased flexion.

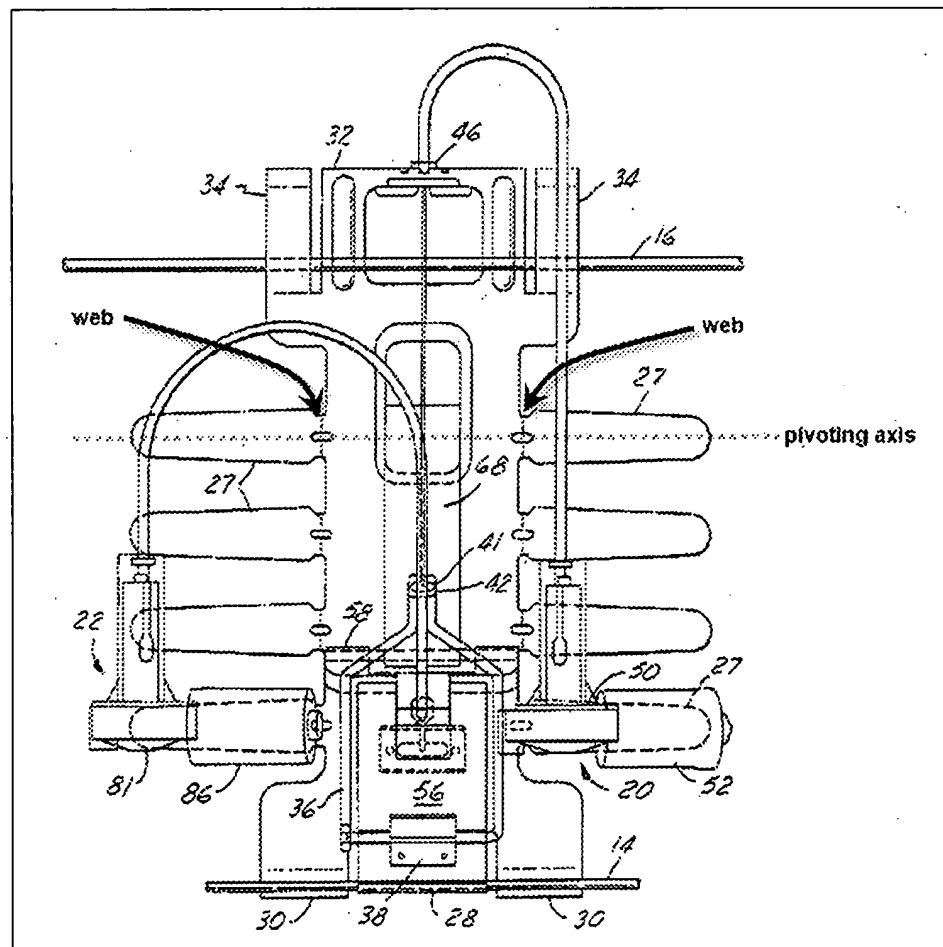


Diagram A - Annotated Figure 3 of Ligon, Sr. et al.

4. Claims 32-52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Publication No. 20030006635 A1 to Klingler.

Klingler discloses a lumbar support mechanism that includes all the limitations recited in claims 32-52. Klingler shows a lumbar support mechanism having a lumbar support element 5 (see Fig. 1), an adjustment device 14 engaging upper and lower portions of the lumbar support element, and two flap portions 11,12 that are oppositely-oriented, attached to the lumbar support element by two connecting webs 10 forming a horizontal pivoting axis, and being completely surrounded by slots 9 in the lumbar support element that are a combination of an open polygon and an open curve wherein the flaps are made of plastic or sheet metal.

5. Claims 35 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,637,817 B1 to Christopher et al.

Christopher et al. disclose a lumbar support mechanism that includes all the limitations recited in claims 32-52. Christopher et al. show a lumbar support mechanism having a lumbar support element 22 (see Fig. 4) being flexible through a range of flexion, an adjustment device 54,58,60 engaging upper and lower portions of the lumbar support element, and two flap portions 52 that are oppositely-oriented wherein the flap portions are completely surrounded and defined by slots in the lumbar support element.

6. Claims 32, 33, 37, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,779,844 B2 to Dosen et al.

Dosen et al. disclose a lumbar support mechanism that includes all the limitations recited in claims 32, 33, 37, and 42. Dosen et al. show a lumbar support mechanism

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having a lumbar support element 14 (see Fig. 1) being flexible through a range of flexion, an adjustment device 20,22 engaging upper and lower portions of the lumbar support element, and two flap portions 42,44 that are oppositely-oriented, attached to the lumbar support element by two connecting webs (left and right portions of central cross member 38) forming a horizontal pivoting axis about which the flap portions pivot upon adjusting of the adjustment device wherein the lumbar support element has variable resilience and the flap portions are integral with the lumbar support element. With respect to claim 34, stiffening of a lumbar support element's variable resilience upon increased flexion is an inherent property of any element subject to increased flexion.

Response to Arguments

7. Applicant's arguments filed 29 August 2006 have been fully considered but they are not persuasive. With respect to the rejection of claims 32, 33, 37, and 42 as being anticipated by Ligon, sr. et al., Applicant argues that the connecting webs of Ligon, Sr. et al. simply hold the flap portions onto the body and do not constitute a pivoting axis. As Applicant concedes that the flap portions 27 of Ligon, Sr. et al. pivot as the lumbar support is arched, one must determine whether the line about which the flap portions 27 pivot is horizontal and results from the connection the flap portions to the connecting webs. Upon examining Figures 3 and 4 of Ligon, Sr. et al., it is clear that the rotation/pivoting of the flap portions is horizontal. Therefore, each flap portion pivots about a horizontal pivot axis. Secondly, the flap portions are solely connected to the

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lumbar support via the connecting webs. Therefore, the connecting webs inherently form the horizontal pivot axis of each flap portion. Otherwise, each flap portion would not be connected to the lumbar support.

Examiner maintains the rejection of claims 32-52 as being anticipated by Klinger, Christopher et al., and Dosen et al., as the application does not pre-date these references.

Conclusion


8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

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9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joe Edell
November 21, 2006



Peter M. Cuomo
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